

Bureau of Land Management, Interior

§ 2091.2-2

rights and is, in most cases, for a limited period which is specified in regulations or in the document that segregates the lands. Where there is an administrative appeal or review action on an application pursuant to part 4 or other subparts of this title, the segregative period continues in effect until publication of an opening order.

(b) Opening orders may be issued at any time but are required when the opening date is not specified in the document creating the segregation, or when an action is taken to terminate the segregative effect and open the lands prior to the specified opening date.

§ 2091.1 Action on applications and mining claims.

(a) Except where the law and regulations provide otherwise, all applications shall be accepted for filing. However, applications which are accepted for filing shall be rejected and cannot be held pending possible future availability of the lands or interests in lands, except those that apply to selections made by the State of Alaska under section 906(e) of the Alaska National Interest Land Conservation Act and selections made by Alaska Native Corporations under section 3(e) of the Alaska Native Claims Settlement Act, when approval of the application is prevented by:

(1) A withdrawal, reservation, classification, or management decision applicable to the lands;

(2) An allowed entry or selection of lands;

(3) A lease which grants the lessee exclusive use of the lands;

(4) Classifications existing under appropriate law;

(5) Segregation due to an application previously filed under appropriate law and regulations;

(6) Segregation resulting from a notice of realty action previously published in the FEDERAL REGISTER under appropriate regulations; and

(7) The fact that, for any reason, the lands have not been made subject to, restored or opened to operation of the public land laws, including the mineral laws.

(b) Lands may not be appropriated under the mining laws prior to the date

and time of restoration and opening. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, vests no rights against the United States. Actions required to establish a mining claim location and to initiate a right of possession are governed by State laws where those laws are not in conflict with Federal law. The Bureau of Land Management does not intervene in disputes between rival locators over possessory rights because Congress has provided for the resolution of these matters in local courts.

§ 2091.2 Segregation and opening resulting from publication of a Notice of Realty Action.

§ 2091.2-1 Segregation.

The publication of a Notice of Realty Action in the FEDERAL REGISTER segregates lands that are available for disposal under:

(a) The Recreation and Public Purposes Act, as amended (43 U.S.C. 869-4), for a period of 18 months (See part 2740 and subpart 2912);

(b) The sales provisions of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) for a period of 270 days (See part 2710). The sales provisions of section 43 CFR 2711.1-2(d) provide for a segregation period, not to exceed two years unless, on a case-by-case basis, the BLM State Director determines that the extension is necessary and documents, in writing, why the extension is needed. Such an extension will not be renewable and cannot be extended beyond the additional two years.

[52 FR 12175, Apr. 15, 1987, as amended at 58 FR 60917, Nov. 18, 1993; 71 FR 67068, Nov. 20, 2006]

§ 2091.2-2 Opening.

(a) The segregative effect of a Notice of Realty Action automatically terminates either:

(1) At the end of the periods set out in § 2091.2-1 of this title (See part 2740); or

(2) As of the date specified in an opening order published in the FEDERAL REGISTER; or

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(3) Upon issuance of a patent or other document of conveyance; whichever occurs first.

(b) [Reserved]

[52 FR 12175, Apr. 15, 1987, as amended at 58 FR 60917, Nov. 18, 1993; 65 FR 70112, Nov. 21, 2000]

§ 2091.3 Segregation and opening resulting from a proposal or application.

§ 2091.3-1 Segregation.

(a) If a proposal is made to exchange public lands administered by the Bureau of Land Management or lands reserved from the public domain for National Forest System purposes, such lands may be segregated by a notation on the public land records for a period not to exceed 5 years from the date of notation (See 43 CFR 2201.1-2 and 36 CFR 254.6).

(b) The filing of an application for lands for selection by a State (exclusive of Alaska) segregates the lands included in the application for a period of 2 years from the date the application is filed. (See subparts 2621 and 2622)

(c) The filing of an application and publication of the notice of the filing of an application in the FEDERAL REGISTER for the purchase of Federally-owned mineral interests under section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719) segregates the lands for a period of 2 years from the date of the publication of the notice of filing of the application with the authorized officer. (See part 2720)

(d) The filing of an application for an airport lease under the Act of May 24, 1928, as amended (49 U.S.C. Appendix 211-213), or the filing of a request for an airport conveyance under the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2215), segregates the lands as of the date of filing with the authorized officer. (See part 2640 and subpart 2911)

(e)(1) The Bureau of Land Management may segregate, if it finds it necessary for the orderly administration of the public lands, lands included in a right-of-way application under 43 CFR subpart 2804 for the generation of electrical energy from wind or solar sources. In addition, the Bureau of Land Management may also segregate

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lands that it identifies for potential rights-of-way for electricity generation from wind or solar sources when initiating a competitive process for solar or wind development on particular lands. Upon segregation, such lands will not be subject to appropriation under the public land laws, including location under the Mining Law of 1872, (30 U.S.C. 22 *et seq.*), but would remain open under the Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*) or the Materials Act of 1947 (30 U.S.C. 601 *et seq.*). The BLM will effect a segregation by publishing a FEDERAL REGISTER notice that includes a description of the lands being segregated. The BLM may effect segregation in this way for both pending and new right-of-way applications.

(2) The effective date of segregation is the date of publication of the notice in the FEDERAL REGISTER. The segregation terminates consistent with subpart 2091.3-2 and the lands automatically open on the date that is the earliest of the following:

(i) When the BLM issues a decision granting, granting with modifications, or denying the application for a right-of-way;

(ii) Automatically at the end of the segregation period stated in the FEDERAL REGISTER notice initiating the segregation, or

(iii) Upon publication of a FEDERAL REGISTER notice terminating the segregation and opening the lands in question.

(3) The segregation period may not exceed 2 years from the date of publication in the FEDERAL REGISTER of the notice initiating the segregation, unless the State Director determines and documents in writing, prior to the expiration of the segregation period, that an extension is necessary for the orderly administration of the public lands. If the State Director determines an extension is necessary, the Bureau of Land Management will extend the segregation for up to 2 years by publishing a notice in the FEDERAL REGISTER, prior to the expiration of the